

TITLE 327 WATER POLLUTION CONTROL BOARD

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SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On April 10, 2002, the water pollution control board (board) conducted the first public hearing/board meeting concerning the development of new rule 327 IAC 5-2.1 concerning combined sewer overflow public notification by National Pollutant Discharge Elimination System (NPDES) permit holders of the potential health impact of combined sewer overflows (CSOs) and amendment of 327 IAC 5-2-9. Comments were made by the following parties:

Hoosier Environmental Council, represented by Rae Schnapp, PhD. (HEC)

Improving Kids' Environment, represented by Tom Neltner (IKE)

Indiana Association of Cities and Towns, represented by Tonya Galbraith (IACT)

Following is a summary of the comments received and IDEM's responses thereto:

Comment: The draft rule goes way beyond the requirements of the legislative mandate in Senate Enrolled Act 431. The legislative directive found in SECTION 23 of SEA 431 does not require communities to make individual notices and to do so as required by the draft rule would place a great burden on the communities affected by this rule. (IACT)

Response: Revisions will be proposed to the preliminarily adopted rule to require the identification of affected waters and affected public. The approach of the revised proposed rule should more closely comport with the requirements of SEA 431. Revisions also will be recommended that more accurately reflect the National CSO Policy requirements. The focus will be on notification of affected public that will likely come into contact with affected waters.

Comment: The notification requirements of the draft rule are greater than those required of public water suppliers when giving a warning to boil drinking water before consumption. (IACT)

Response: In addition to the requirements of SEA 431, the original requirement for public notification comes from the 1994 National CSO Policy. EPA guidance on CSO Policy implementation states: "The intent of the eighth minimum control, public notification, is to inform the public of the location of CSO outfalls, the actual occurrences of CSOs, the possible health and environmental effects of CSOs, and the recreational or commercial activities (e.g., swimming and shellfish harvesting) curtailed as a result of CSOs. Public notification is of particular concern at beach and recreational areas directly or indirectly affected by CSOs. The guidance recommends the following potential notification measures: (1) Posting signs at affected use areas; (2) Posting signs at selected public places; (3) Posting signs at CSO outfalls; (4) Notices in newspapers or on radio and TV news programs; (5) Letter notification to affected residents; and (6) Telephone Hot Line for interested citizen calls." The rule is being revised since the board's preliminary adoption to reflect the intent and requirements of the CSO Policy and SEA 431.

Comment: Section 5(b) of the draft rule is in conflict with section 6(b)(3). The former section only requires the notification to be appropriately worded to explain the nature of the potential health effects and steps a person can take to avoid exposure, but the latter section requires specific language to be used. (IACT)

Response: The requirement of section 5(b) is intended to apply to notification mailed or telephoned to the affected public while the language specified in section 6(b) is to be used on signs posted within a community at locations where the public may come into contact with water

affected by a combined sewer overflow.

Comment: The Water Pollution Control Board did not adopt this rule before September 1, 2001, as required by SEA 431; therefore, it would not be a problem to take more time to correct the deficiencies in the draft rule before it is preliminarily adopted by the water board. (IACT)

Response: IDEM will act according to the water board's directive to work further on the rule in coordination with interested parties before bringing the rule before the water board for final adoption.

Comment: The Hoosier Environmental Council supports the draft rule for preliminary adoption and believes it is very important to provide notification to individuals who use waterbodies that may be affected by combined sewer overflows. It is further suggested that the rule should require that notification be made when new connections that could cause more combined sewer overflows are made to a wastewater treatment plant. (HEC)

Response: The General Assembly did not include any provision to address new connections to a wastewater treatment plant in SEA 431. However, IDEM is currently working with stakeholders on a nonrule policy concerning wastewater treatment plants and the requirements for construction permits when sewer collection systems have capacity problems due to additional connections.

Comment: The Improving Kids' Environment organization supports the draft rule for preliminary adoption because it is going to take a long time to fix the combined sewer overflow problems in the various Indiana communities, and, until the overflows cease, notification is needed to alert and warn the public that is at risk of coming into contact with affected waterbodies. (IKE)

Response: IDEM believes the revised proposed rule that is being developed with stakeholder participation since preliminary adoption of the draft rule will meet the requirements of both SEA 431 and the National CSO Policy. The notification process and procedures will be effective in protecting the affected public while CSO communities continue to work on abating the impacts of CSO discharges.

Comment: As a proponent of the legislation that directs the water board to adopt a rule for combined sewer overflow notification, the Improving Kids' Environment believes that the legislative negotiations did not distinguish how notification is to be made and whether it must be individual or community-wide. The intent of the legislation was to effectively provide the necessary information in the best manner possible to protect those members of the public who may be affected by waters contaminated by combined sewer overflow. The legislation places the water board in position to judge how best to effect public health protection. There will be circumstances when individual notification is the best manner to effectively protect the health of those in the public likely to be affected by combined sewer overflow. (IKE)

Response: Revisions to the preliminarily adopted rule that are being developed with stakeholder participation since preliminary adoption of the draft rule will more clearly define the dose/response relationship for an affected public coming into contact with affected waters and the appropriate notice a CSO community must give. Any water that receives a CSO discharge meets the definition of "affected waters". A CSO community is required to identify the affected public and make notification to those affected as they are the ones who will be at risk of exposure.

Comment: It would not create problems for this draft rule if it included a grandfather clause to allow the continued use of the warning signs presently in place at combined sewer overflow outfalls as required by the federal minimal controls/long term control plan. (IKE)

Response: The proposed (preliminarily adopted) rule that is the subject of this notice did

not adequately address this issue of existing outfall signs that have been placed by CSO communities in accordance with provisions of their NPDES permits. However, the proposed rule is being revised since preliminary adoption, and those revisions will contain a new section 6(c) that makes provisions for the continued use of cautionary signs posted prior to October 2002.

Comment: Sufficient health protection would not be afforded by this rule if it were limited to the disinfection season. People, especially children, enter the water any time it is available. (IKE)

Response: IDEM agrees that SEA 431 does not direct the rule to be limited to the disinfection season (recreational season of April through October), and to do so would prevent compliance with the requirement clearly stated in SEA 431 that notification be given whenever any reliable source indicates that a combined sewer overflow is occurring or there is reasonable likelihood that a discharge from one or more combined sewer overflow points will occur within the next twenty-four (24) hours.